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# **Notice of Allowability**

Application No.

10/625,966

Examiner

Michael C Astorino

Applicant(s)

BERGH ET AL.

Art Unit

3736

## **-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to interview on 4/13/2005.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☒ The drawings filed on 01 July 2003 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☒ None   of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                              |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>0514</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>3&amp;4/2004</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                                      |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                                   | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                     |
|  | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Dean Russell on April 13, 2005.

The application has been amended as follows:

#### Specification

In paragraph after ¶ 0028 of the published application:

--FIG. 4 presents graphs of satiation as a function of time after meals for groups of both healthy and anorexic women.--

#### Claims

6. (currently amended) A device according to claim 1, wherein at least one of said alerting means generates a vibration to said device ~~due to the right to privacy for person trying to cure a disorder.~~
9. (currently amended) A method according to claim 7, wherein said indicating ~~means is~~ action comprises using a floating color scale within said modified Borg type scale indicating from brighter colors to less brighter colors after registering a felt satiety, indicating when eating is more and more recommended.

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10. (currently amended) A method according to claim 7, wherein said indicating ~~means-is~~ action comprises using a floating color scale within said modified Borg type scale indicating from less brighter colors to less-brighter colors after registering a felt satiety, indicating when eating is more and more recommended.

11. (currently amended) A method according to claim 7, wherein said indicating ~~means-is~~ action comprises using a floating color scale within said Borg type scale indicating from less brighter colors to brighter colors after registering a felt satiety, and a switch switching at a predetermined brightness to a floating color scale within said modified Borg type scale indicating from brighter colors to less brighter colors after registering a felt satiety, indicating when eating is more and more recommended.

12. (currently amended) A method according to claim 1, wherein at least one of said alerting ~~means-generates~~ actions comprises generating a vibration to said device ~~due to the right to privacy for person trying to cure a disorder.~~

The following is an examiner's statement of reasons for allowance: "A Category Scale With Ratio Properties for Intermodal and Interindividual Comparisons" by Gunnar Borg cited by applicant), discloses the use of a rating scale, and Curry et al. discloses an attention-focusing device. However, the prior art by itself or in combination does not disclose the device or method of using the device that "at least one of an indicating and an alerting means acknowledging when food-intake is accepted for said person, thus aiding said person in a smooth long term dieting

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contradicting extreme excessive short term dieting.” The prior art including Sagel teaches a diet-tracking system, devices for estimating energy expenditure of the subject and a satiety agent, and Dennison teaches a method for evaluating and analyzing food choices are pertinent prior art.

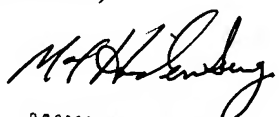
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino  
April 15, 2005

  
MAX F. HINDENBURG  
ASSISTANT PATENT EXAMINER  
TECHNOLOGY CENTER 3700